Saskatchewan Financial Services Commission
Pensions Division

UPDATE CONCERNING *THE PENSION BENEFITS AMENDMENT ACT, 2004*

We are pleased to advise you that *The Pension Benefits Amendment Act, 2004* will be proclaimed into law effective June 1, 2005, along with *The Pension Benefits Amendment Regulations, 2005*. This bulletin will provide you with the highlights of the amendments.

Pre-retirement Survivor Benefit

Section 33 of the Act, Pre-retirement Survivor Benefit, was repealed and replaced. The new section 33 requires a plan to provide the following benefit in the event of a death of a member or former member who has not commenced his or her pension:

- Where the member or former member dies before the earliest day on which the member or former member could have elected to receive a pension, a surviving spouse is entitled to receive a pension the value of which is equal to the commuted value of the pension of the deceased member or former member. Under the former legislation, the minimum survivor benefit was a pension equal in value to the commuted value of the deceased member's pension for service on and after January 1, 1994. The amendment extends the application of this provision to all years of service. This change increases the death benefit paid to some surviving spouses and simplifies administration of the provision for pension plan administrators.

- Where the member or former member dies after the earliest day on which the member or former member could have elected to receive a pension, the surviving spouse is entitled to receive a pension calculated in accordance with the post-retirement survivor benefit pursuant to section 34 of the Act, as if the member or former member had commenced his or her pension on the date of death. This provision was unchanged.

- A surviving spouse may elect within the period of 180 days following the day on which proof of death is provided to the administrator to:
    - transfer the commuted value of his or her pension in accordance with the portability provisions found in section 32 of the Act; or
    - receive a lump sum payment equal to the commuted value of his or her pension.

  This new provision allows a surviving spouse to receive a lump sum payment of the survivor benefits. Previously, survivor benefits had to be locked in. A plan may provide that where the spouse fails to make an election within 180 days, the surviving spouse is deemed to have elected to receive a lump sum payment.

- If the member or former member dies without leaving a surviving spouse, a lump sum payment equal to the commuted value of the pension to which a surviving spouse would have been entitled is paid to a designated beneficiary of the deceased member or former member or, if there is no validly designated beneficiary, to the estate of the deceased member or former member. This provision is unchanged.

- At any time before the date of death of a member or former member, the spouse of the member or former member may waive the spouse's entitlement by delivering a written and signed waiver to the administrator. A waiver form for this purpose may be found in the Regulations. The spouse may revoke a waiver at any time before the death of the member or former member by delivering a written and signed notice of revocation to the administrator. This notice is not prescribed in Regulations. The effect of signing a waiver is that a plan administrator can pay the benefit as if the member or former member died leaving no surviving spouse.

Flexible Pension Plans

The amendments enable, but do not require, employers and unions to develop flexible pension plans. A flexible pension plan is a defined benefit plan with an added feature that permits members to make optional additional contributions to be used to purchase enhanced pension benefits at retirement. A flexible pension plan can offer a number of optional ancillary benefits that typically include, but are not limited to, reducing the age at which an unreduced pension can be paid, improving survivor benefits, providing bridging benefits and cost of living adjustments.

The Pension Benefits Amendment Act, 2004 introduces new provisions to accommodate flexible pension plans:

- Optional ancillary benefits and optional contributions are exempt from the 50 percent employer cost rule and the locking in provisions of sections 29 and 31 of the Act.

- Interest must be paid on optional ancillary contributions on the same basis as interest is credited to member contributions to a defined contribution provision.

- A pension plan is required to retain optional ancillary contributions that are required to be forfeited in order to comply with the *Income Tax Act*.

- A pension plan is required to specify the method to be used for the conversion of optional ancillary contributions to optional ancillary benefits. The method of conversion must be made on the basis of actuarial assumptions and methods that are appropriate and in accordance with accepted actuarial practice.

The Regulations set out additional disclosure requirements for pension plans that choose to offer flexible benefits to members. Appropriate disclosure under flexible pension plans is particularly important since optional ancillary contributions made by a member may be forfeited in order to ensure that the flexible component of the pension plan is not used to provide tax-deferred savings in excess of the limits under the *Income Tax Act*. Specifically, a flexible pension plan must ensure that:

- The employee booklet provided to new and prospective members includes a description of the optional ancillary benefits available on conversion, the terms and conditions for making an election for conversion of optional ancillary contributions to optional ancillary benefits and a statement concerning the risk of forfeiture to the plan of optional ancillary contributions pursuant to the *Income Tax Act*.

- The annual statement provided to members who elect to make optional ancillary contributions includes an estimate of the amount of optional ancillary contributions that a member may make in the fiscal year following the fiscal year to which the annual statement applies, the optional ancillary benefits chosen by the member for any options already exercised and a statement that optional ancillary contributions may be forfeited to the plan pursuant to the *Income Tax Act*.

- The statement provided to members, on termination or retirement, who have made optional ancillary contributions includes updated information concerning the balance of optional ancillary contributions at the end of the previous fiscal year, the optional ancillary contributions made during the fiscal year covered, the interest accrued during the fiscal year covered, the rate of interest or the manner in which interest was applied and an explanation of the options available with respect to the member's optional ancillary contributions.

- The above disclosure items must provide members with information concerning the method used to credit interest to optional ancillary contributions. Optional ancillary contributions must be credited with the pension fund's rate of return.

Limits for Unlocking Small Benefits

Section 39 of *The Pension Benefits Act, 1992* provides that a plan can make a lump sum payment in lieu of a pension where the amount or value of the pension falls below a threshold amount. The amendments provide that a plan administrator may make a lump sum payment where:

- The maximum amount of the commuted value of a pension does not exceed 20% of the Year's Maximum Pensionable Earnings (YMPE) in effect in the year in which the payment occurs; or
- The maximum amount of the annual pension does not exceed 4% of the YMPE in effect in the year in which the payment occurs.

The old limits under the legislation were 4% of the YMPE regarding the commuted value of a pension and 2% of the YMPE regarding an annual pension.

The YMPE is a figure determined under the Canada Pension Plan. For 2005, the YMPE is $41,100. Therefore, if a plan member terminates employment or retires in 2005 and the plan has incorporated the new small benefit provision into its plan text, then the plan administrator could make a lump sum payment in lieu of a pension where the commuted value of the member's pension does not exceed $8,220. If the member is eligible to commence a pension, then the administrator could make a lump sum payment if the member's annual pension is less than $1,644.

Changes to Locked-in Retirement Accounts

The Regulations prescribing the contractual provisions of Locked-in Retirement Accounts have been amended to mirror the amendments that affect pension plans:

- A surviving spouse is provided with the option to receive a survivor benefit in cash.
- A surviving spouse is permitted to waive entitlement to the survivor benefit prior to the death of the owner of a LIRA contract using a prescribed waiver form.

As well, a LIRA contract may contain a small benefit provision. This provision has been simplified and the threshold limit has been updated. The contract may provide for the withdrawal of the locked-in money as a lump sum if the amount of the locked-in money does not exceed 20% of the YMPE in effect in the year in which the withdrawal occurs. However, the issuer of the contract must be satisfied that the owner has no other locked-in money. The annual pension test can no longer be applied to a LIRA contract.

Voluntary Contributions Protected from Creditors

Section 63 of *The Pension Benefits Act, 1992* protects assets held in registered pension plans, Locked-in Retirement Accounts (LIRA) and prescribed Registered Retirement Income Funds from enforcement proceedings by creditors (other than enforcement proceedings under *The Enforcement of Maintenance Orders Act, 1997*).

The Registered Plan (Retirement Income) Exemption Act, which came into force on March 4, 2003, extended the existing exemption from enforcement proceedings for pension money to other forms of retirement savings. Ordinary Registered Retirement Savings Plans, Registered Retirement Income Funds and Deferred Profit Sharing Plans are also now exempt from enforcement proceedings by creditors (other than enforcement proceedings under *The Enforcement of Maintenance Orders Act, 1997*).

The amendments extend the protection provided to locked-in pension money and other forms of retirement savings through section 63 to additional voluntary contributions in a pension plan.

Copy of Regulations

The Regulations were published in the March 11, 2005 issue of the *Saskatchewan Gazette*. You may access a copy of the Regulations in that issue at:

http://www.qp.gov.sk.ca/index.cfm?fuseaction=publications.details&p=9612

Alternatively you can purchase a paper copy of the *Saskatchewan Gazette* by contacting:

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Amendments to Pension Plans

You should review your pension plan provisions to determine if amendments are required to reflect the above legislative changes. Although plans must be administered in accordance with the new legislation, effective June 1, 2005, administrators have until December 31, 2005 to file any required amendments for registration with our office.

Amendments to Locked-in Retirement Accounts

Issuers of LIRA contracts must amend their contracts to reflect the new survivor benefits in the Regulations. In addition, if a LIRA contract provides for the unlocking of small benefits those contractual provisions must be amended to reflect the changes in the Regulations. It is not necessary to file those amendments with the Pensions Division.

The changes affect existing LIRA contracts. Consequently, issuers should ensure that LIRA contract owners are informed of the changes to their contracts. In addition, any individuals who are involved in the selling or administration of LIRA contracts should be informed of the changes to the Regulations.

More Information

Should you require additional information please contact:

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Prepared: March 2005